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February 4, 2008

VIA ELECTRONIC MAIL

The Honorable Paul A. Crotty
United States District Court
Southern District of New York
500 Pearl Street
Chambers 735
New York, NY 10007

Re: Bernstein v. The Chubb Corporation, et al., 08-cv-00193-PAC;
Request for an Extension to Answer, Move or Otherwise Respond

Dear Judge Crotty:

This firm represents the defendants in the above-captioned *Bernstein* matter. For the reasons set forth below, we are writing to request an extension of time to answer, move or otherwise respond to the operative complaint. No such requests have previously been made in this matter.

The *Bernstein* matter was filed on January 9, 2008. It names the same defendants, sets forth substantially the same allegations and purports to assert the same causes of action as the last complaint filed in *Spagnola v. Great Northern Insurance Company, et al.*, 06-cv-9960-HB, a suit previously filed in this Court by the same law firm representing Mr. Bernstein and assigned to the Honorable Harold Baer, Jr. A copy of the last filed *Spagnola* complaint is attached as Attachment A. Upon consideration of the defendants' motion to dismiss, Judge Baer dismissed the *Spagnola* litigation by an opinion dated March 27, 2007. A copy of that opinion is also attached as Attachment B. The plaintiff's appeal from that ruling has been fully briefed and is currently pending before the U.S. Court of Appeals for the Second Circuit.

On January 9, 2008, Mr. Bernstein, through his counsel, sent a letter to Judge Baer notifying him of the commencement of the *Bernstein* matter, which counsel described as "substantially similar" to the *Spagnola* case and which he explained was filed "[l]argely to avoid needless statute of limitation issues" A copy of that correspondence and the defendants' response is attached as Attachments C and D. The plaintiff's counsel further wrote that, "in light of the pending [*Spagnola*] appeal, [he] would consent to stay all proceedings in the *Bernstein* matter pending the appellate decision, which obviously bears on the future of these proceedings." The plaintiff also asked the defendants' counsel to accept service of process.

MEMO ENDORSED

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The Honorable Paul A. Crotty
February 4, 2008
Page Two

By letter dated January 11, 2008, the defendants' counsel responded to the plaintiff and agreed to accept service of process on the defendants subject to the understanding that the plaintiff would promptly file the appropriate papers seeking to stay the case. Nevertheless, and without notifying defendants' counsel, the plaintiff proceeded to attempt service on each of the defendants on January 15, 2008. The defendants did not learn of this attempted service until recently reviewing the Court's docket.

Assuming service was sufficient, a matter which the defendants reserve the right to dispute, the defendants' answer or other response to the Complaint would be due today, February 4, 2008. Accordingly, the defendants seek an extension of time to answer, move against or otherwise respond to the *Bernstein* complaint until 45 days after the Second Circuit has issued its decision concluding the *Spagnola* appeal.

The defendants' counsel sought the plaintiff's consent to the foregoing request by e-mail earlier today. Although counsel exchanged e-mails, copies of which are attached as Attachment E, counsel for the plaintiffs has not agreed to or refused this request.

As previously noted and acknowledged by the plaintiff, the operative complaints in the two matters are substantially similar and the Second Circuit's decision in the *Spagnola* matter will be relevant to any disposition of the *Bernstein* case. Further, the *Spagnola* appeal has been fully briefed since July 31, 2007 and, last month, the plaintiff filed a motion seeking to expedite its consideration. Accordingly, the defendants submit that it would be a waste of judicial resources as well as those of the parties to proceed with the briefing of any motion to dismiss the *Bernstein* matter until after the Second Circuit has issued its decision on the relevant issues.

Thank you very much for your consideration of this request.

Very truly yours,

A handwritten signature in cursive script that reads 'Keara M. Gordon'.

Keara M. Gordon

Enclosures

cc: Roger Kirby, Esq. (by e-mail)

A handwritten signature in cursive script that reads 'Paul A. Crotty'.
*SO ORDERED: 2/6/08
HON. PAUL A. CROTTY
UNITED STATES DISTRICT JUDGE

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The Honorable Paul A. Crotty
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Re: *Bernstein v. The Chubb Corporation, et al.* 08-cv-00193-PAC

Dear Judge Crotty

This firm represents plaintiff. As we have previously told defendants' counsel, provided they accept and acknowledge effective service, we will not object to an adjournment of time in which to answer the complaint to a date that follows decision by the court of appeals, which almost certainly will address issues raised by the instant pleading. Defendants did not accept the proposal, but instead conditioned it on make-work, which, if it had to be done at all, would have properly been done by the party benefitting from the adjournment, viz defendants. See defendants' attachment D. We are happy to renew our initial proposal, and accordingly, provided defendants acknowledge effective service, would consent to an extension for 20 days following appellate decision. The 45 days requested seems excessive. If the Court feels for any reason that it requires the appellate briefs in connection with this application, we shall provide them promptly. Thank you.

Respectfully submitted,



Roger W. Kirby

cc: Keara M. Gordon, Esq. (By Email)